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In the
SUPREME COURT OF THE UNITED STATES

October Term, 1998

Zena D. Crenshaw, *Petitioner,*

v.

The Disciplinary Commission of the
Supreme Court of Indiana, *Respondent.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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Petitioner Pro Se
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31 pp

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Question Presented

1. Whether the United States Court of Appeals should issue a writ of prohibition to protect its jurisdiction over an appeal challenging a district court's abstention in a case asserting federal claims prompted by an allegedly biased tribunal, advancing the matter to adjudication in state court while the appeal questioning the appropriateness of federal intervention is pending.

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In the
SUPREME COURT OF THE UNITED STATES

October Term, 1998

Zena D. Crenshaw, *Petitioner,*

v.

The Disciplinary Commission of the
Supreme Court of Indiana, *Respondent.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

Zena D. Crenshaw respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Seventh Circuit, denying her petition for a writ of prohibition to the Disciplinary Commission of the Supreme Court of Indiana.

JURISDICTION

The court of appeals entered its order denying Ms. Crenshaw's petition for writ of prohibition on August 31, 1998. *(Appendix A).* Her petition for rehearing with suggestion for rehearing en banc was filed on September 8, 1998 and denied on October 5, 1998. *(Appendix B).* The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and pursuant to Supreme Court Rule 13.1.

Statement of the Case

On August 21, 1998, Zena D. Crenshaw petitioned the United States Court of Appeals, Seventh Circuit, for a writ of prohibition. *(In re Zena D. Crenshaw, U.S. Court of Appeals, 7th Cir., No. 98-3142, Pet For Rehrng, App p 2).* She asked that the writ be directed to the Disciplinary Commission of the Supreme Court of Indiana (Disciplinary Commission), commanding it to cease investigating a grievance filed against

her by Richard M. Cagen (Cagen Grievance), and requiring that she interpose related constitutional claims before the Supreme Court of Indiana when jurisdiction over said matters was vested in the United States District Court for the Southern District of Indiana at Indianapolis and it remains within the appellate court's prerogative to determine whether that jurisdiction should be exercised. *(Pet For Rehrng, App p 2).* The petition, mislabeled as "Writ Of Mandamus" and "Petition for a Writ of Prohibition from the United States District Court for the Southern District of Indiana, Indianapolis Division", was denied on August 31, 1998 without comment. *(Appendix A).*

On September 8, 1998, Ms. Crenshaw petitioned for rehearing, suggesting rehearing en banc, on the following grounds:

> 1. The language of the Court's Order, denying said petition for writ, suggests that it may have misapprehended the nature of relief sought;

2. The Court's failure to issue the writ as requested, essentially sanctions a proceeding that its recent decision, *Trust & Inv. Advisors, Inc. v. Hogsett,* 43 F.3d 290 (7th Cir. 1994), does not condone;

3. The Court's failure to issue the writ as requested, may deprive all lawyers of an impartial determination of certain constitutional rights, triggered by a Request For Investigation, submitted to the Disciplinary Commission;

4. The Court's failure to issue the writ as requested, may deny Ms. Crenshaw the right to appeal a judgment entered against her in cause number IP98-0240-C-M/S before the United States District Court for the Southern District of Indiana at Indianapolis, *Zena D. Crenshaw v. The Supreme Court of Indiana, et. al.*;

5. The Court's failure to issue the writ as requested, puts Ms. Crenshaw ". . . between Scylla of intentionally flouting state law and the Charybdis of foregoing what (she) believes to be constitutionally protected activity in order to avoid becoming enmeshed in a (contempt) proceeding . . ." *See, Steffel v. Thompson,* 94 S.Ct. 1209 at 1217 (1974).

(Pet For Rehrng, p 1).

The complaint precipitating the referenced appeal challenges the constitutionality of Rule 23 of the Indiana Rules for

Admission To The Bar and The Discipline of Attorneys to the extent that it creates a conclusive presumption as to the validity of any subpoena propounded pursuant thereto and compels punishment for an American citizen who, in good faith, seeks to challenge, object to, and/or move to quash such a subpoena. *(Pet for Rehrng, App Exhibit 1).* Ms. Crenshaw further objects to the rule to the extent that it empowers the Disciplinary Commission to conduct unbridled investigation of a lawyer's conduct and grants them unfettered authority and discretion to investigate every aspect of his or her life. *(Pet for Rehrng, App Exhibit 1).*

Specifically, Ms. Crenshaw contends that it violates her right to privacy, due process and/or equal protection for the Disciplinary Commission to independently investigate her conduct in a position of private trust when:

a. the matter is pending before the Lake Circuit Court, Probate Division, sitting at Crown Point, Indiana;

b. the laws of probate for the State of Indiana provide a more than adequate mechanism for an accounting of Ms. Crenshaw's conduct as it relates to her mother's estate;

c. abstention in favor of another court having more expertise in the subject matter at hand is often invoked and is the favored course of action. *Railroad Commission of Texas v. Pullman,* 312 U.S. 496, 85 LEd 971 (1941);

d. the usual practice for discipline is to let other proceedings run their course. *In Re Wall,* 13 F 814 at 816 (C.C., S.D. Fla. 1882), affirmed *Ex Parte Wall,* 107 U.S. 265, 27 LEd 552 at 559 (except when the conduct is particularly outrageous and immoral [lynching] @554 the conduct is either actually or technically admitted @557, and there was misconduct in one's professional capacity or affecting one's character as an attorney @559;

e. there is no finding or unequivocal allegation of misconduct against Ms. Crenshaw;

f. there is no hint of blatant, gross, or persistent misconduct or moral turpitude associated with her conduct;

g. Ms. Crenshaw has not been the subject of any grievance before the Disciplinary Commission in nearly a decade - only two (2) such grievances were made against her before the Cagen Grievance, both of which were summarily

dismissed - she has never been the subject of disciplinary action before the defendants during her tenure as an attorney of fourteen (14) years;

h. Ms. Crenshaw has the benefit of more avenues of appeal and less negative stigma when accounting for her conduct before a Probate Court as opposed to the Disciplinary Commission;

i. disposition of matters before the Probate Court may be dispositive of the issues before the Disciplinary Commission;

j. the usual practice for the Disciplinary Commission is to allow other legal proceedings to run their course when an attorney is charged with misconduct in a personal as opposed to professional capacity. *Matter of Willardo,* 493 N.E.2d 466 at 466-467 (Ind 1986); *Matter of Melvin Morris,* 656 N.E.2d 257 at 257-258 (Ind 1995).

The mandate concluding appeal number 98-2882 before the United States Court of Appeals, Seventh Circuit, *Zena D. Crenshaw v. The Supreme Court of Indiana, et. al.*, may allow Ms. Crenshaw to prove that she is a target of retaliatory, special prosecution.

The dispositive issues for the petitions at issue were

presented as follows:

> 1. Whether investigation of the Cagen Grievance would constitute irreparable injury and unwarranted interference with (the) Court's jurisdiction;
>
> 2. Whether investigation of the Cagen Grievance is imminent;
>
> 3. Whether the Commission or (the) Court (Seventh Circuit) should determine if federal abstention is appropriate with regard to the Cagen Grievance;
>
> 4. Whether a justiciable question as to conflict of jurisdiction has arisen.
>
> *(Pet For Rehrng, App p 2-3).*

Ms. Crenshaw referenced *City of Fresno v. Edmonston,* 131 F. Supp. 421 (1955), citing *Food, Tobacco, Agricultural and Allied Wkrs. v. Smiley,* 3 Cir., (1947), 164 F.2d 922, and explained:

> The Commission seeks to usurp this Court's jurisdiction and prerogative by compelling the petitioner to forego her constitutional objections or interpose them before the Supreme Court of Indiana. Efforts to investigate the Cagen Grievance are clearly in

progress. They ". . . (amount) to irreparable injury and unwarranted interference with the powers of . . ." the United States Court of Appeals. *City of Fresno v. Edmonston,* 131 F. Supp. 421 at 425 (1955), citing *Food, Tobacco, Agricultural and Allied Wkrs. v. Smiley,* 3 Cir., (1947), 164 F.2d 922.

The *Edmonston Court* noted a provision of the United States' Supreme Court:

> . . . where there is concurrent jurisdiction, and the substantive issues were so far the same, the Court first seized with jurisdiction should proceed to determination of the questions without interference.
>
> *Edmonston at 425,* citing *Rickey v. Miller & Lux,* 218 U.S. 258 at 262.

Of course, the jurisdiction of this Court and that of the Supreme Court of Indiana is not concurrent with regard to the Cagen Grievance. Nonetheless, the Commission can moot the petitioner's related appeal by advancing its proceedings or compelling the petitioner to do so before the Supreme Court of Indiana. Its efforts have created ". . . a justiciable question as to conflict of jurisdiction. . ." *Edmonston at 425.* Considering that an appeal was instituted before this Court well before the petitioner received notice that investigation of the Cagen

> Grievance was reinstituted and that the appellant's brief is due on September 8, 1998, the appeal should be determined on its merits.
>
> *(Pet for Rehrng, App p 5-6). (exhibit references omitted).*

Ms. Crenshaw subsequently represented:

> The respondents were ushered into a controversy between the plaintiff and the Honorable Jeffrey J. Dywan, Judge of the Lake Superior Court, Room One (1), sitting at Hammond, Indiana. (*See, Crenshaw v. The Supreme Court of Indiana, et. al.*, No. 98-2882 before the United States Court of Appeals for the Seventh Circuit). The Dywan Controversy mushroomed into a charge of conspiracy to cover-up allegations of impropriety associated with the state courts of Indiana. (*See, Crenshaw v. Baynerd, et. al.*, No. 98-3156 before the United States Court of Appeals for the Seventh Circuit). Chief Justice Shepard facilitated the alleged cover-up in his capacity as Chairperson of the Indiana Judicial Qualifications Commission. (*See, Crenshaw v. The Supreme Court of Indiana, et. al.*, No. 98-2882 before the United States Court of Appeals for the Seventh Circuit). Of course, the United States District Court for the Southern District of Indiana previously noted:
>
> > . . . even if this minimal public involvement warrants an

> inference that the Chief Justice and an associate justice are biased, the fact remains that the investigative and adjudicative functions of any disciplinary action are carried out by the Executive Secretary, the Commission and the hearing officer, not the Supreme Court.
>
> *Sterns v. Lundberg*, 922 F. Supp 164 at 170 (S. D. Ind. 1996).

The Disciplinary Commission, its Executive Secretary and staff attorney face charges that the lawsuit culminating with the aforementioned appeal is an outgrowth of their unlawful retaliation. (*See, Crenshaw v. The Supreme Court of Indiana, et. al.*, No. 98-2882 before the United States Court of Appeals for the Seventh Circuit).

This Court recently noted:

> Almost forty years ago, the Supreme Court reaffirmed a simple but fundamental tenet of due process - 'no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.' . . . This rule applies to courts and administrative agencies alike . . .

> It is also sufficiently broad to encompass not only those adjudicators with significant, personal financial stakes in the outcome of their cases, but also those whose interests are indirect or somewhat less than substantial.
>
> *Trust & Inv. Advisors, Inc. v. Hogsett*, 43 F. 3d 290 at 295 (7th Cir. 1994). (citations omitted).

Accordingly, deference to the Disciplinary Commission in the present case ". . . must be forbidden if the guarantee of due process is to be adequately implemented." *Id. at 297.* The United States Supreme Court would consider the administrative process at issue ". . . so defective and inadequate as to deprive the (plaintiff) of due process of law." *Gibson v. Berryhill*, 411 U.S. 564 (1973). Deference to it would not be '. . . constitutionally acceptable simply because . . . ' the Supreme Court of Indiana or of the United States could ultimately resolve outstanding issues. *Id. at 297.* Your petitioner ". . . is entitled to a neutral detached judge in the first instance." *Hogsett at 297.* The Court's failure to issue its writ as requested, conflicts with this tenet of law which it authored.

A federal court should abstain from

intervening in a bar disciplinary proceeding that is currently ongoing. *See, Middlesex County Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, 432 (1982). This Court indicates that such a proceeding is ongoing if it has progressed to formal adjudication. *See, Pincham v. Illinois Judicial Inquiry Board,* 872 F.2d 1341 (7th Cir. 1989). The respondents are advancing their investigation of your petitioner to adjudication, though jurisdiction over federal claims generated by that investigation was vested in the United States District Court for the Southern District of Indiana. This Court has exclusive jurisdiction to determine whether federal intervention is appropriate in the matter and the Disciplinary Commission is blatantly usurping that prerogative.

If this Court does not protect its jurisdiction by issuing the requested writ, a Rule To Show Cause will likely be propounded upon your petitioner by the Supreme Court of Indiana. That action alone may preclude federal intervention, moot your petitioner's appeal and substantial federal questions likely to resurface. All lawyers would then be deprived of an impartial determination of certain constitutional rights triggered by a Request For Investigation, submitted to the Disciplinary Commission. At a minimum, your petitioner will have to risk sanctions, including a possible loss of livelihood, or abandon her right to an appeal she has paid for and briefed.

(Pet For Rehrng p 7-10). (appendix references omitted).

Nonetheless, on October 5, 1998, the United States Court of Appeals entered its order, indicating ". . . no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing." *(Appendix B).*

Reasons for Granting the Writ

The United States Court of Appeals has broad discretion regarding the issuance of extraordinary writs. This Court provides some guidance on the subject. However, it does not prevent the circuits from deferring to state court proceedings even while the appropriateness of federal intervention in the matter is questioned on appeal. Several practical difficulties can result from such a course of action. The most likely is that this Court will contend with overlapping petitions for certiorari from state and federal

courts, respectively. Though both may be denied, such duplication of effort is easily averted by an appropriate writ from the United States Court of Appeals, precluding state intervention until any relevant, federal appeal is resolved and a subsequent writ of certiorari fails to issue. A colorable claim for denial of due process precipitated by bias should certainly trigger a protective writ as the state appellate process cannot reverse such a violation of constitutional rights.

This Court's general instruction that the first court seized with jurisdiction should proceed to determine the questions without interference allows the United States Court of Appeals to defer to competing state court proceedings while the appropriateness of federal intervention in the matter is questioned on appeal, creating practical difficulties that suggest case law should further develop the circumstances properly triggering an extraordinary writ from the United States Court of Appeals.

Ms. Crenshaw referenced *City of Fresno v. Edmonston*, 131 F. Supp. 421 (1955), citing *Food, Tobacco,*

Agricultural and Allied Wkrs. v. Smiley, 3 Cir., (1947), 164 F.2d 922, in support of her petition for writ of prohibition and explained:

> The Commission seeks to usurp this Court's jurisdiction and prerogative by compelling the petitioner to forego her constitutional objections or interpose them before the Supreme Court of Indiana. Efforts to investigate the Cagen Grievance are clearly in progress. They ". . . (amount) to irreparable injury and unwarranted interference with the powers of . . ." the United States Court of Appeals. *City of Fresno v. Edmonston*, 131 F. Supp. 421 at 425 (1955), citing *Food, Tobacco, Agricultural and Allied Wkrs. v. Smiley*, 3 Cir., (1947), 164 F.2d 922.
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> The *Edmonston Court* noted a provision of the United States' Supreme Court:
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> *Edmonston at 425*, citing *Rickey v. Miller & Lux*, 218 U.S. 258 at 262.

> Of course, the jurisdiction of this Court and that of the Supreme Court of Indiana is not concurrent with regard to the Cagen Grievance. Nonetheless, the Commission can moot the petitioner's related appeal by advancing its proceedings or compelling the petitioner to do so before the Supreme Court of Indiana. Its efforts have created ". . . a justiciable question as to conflict of jurisdiction . . ." *Edmonston at 425.* Considering that an appeal was instituted before this Court well before the petitioner received notice that investigation of the Cagen Grievance was reinstituted and that the appellants' brief is due on September 8, 1998, the appeal should be determined on its merits.
>
> *(Pet For Rehrng, App p 5-6). (exhibit references omitted).*

This guidance from the United States Supreme Court did not compel the Seventh Circuit to issue its writ and protect jurisdiction over the referenced appeal. The resulting practical difficulties suggest that case law should further develop the circumstances properly triggering an extraordinary writ from the United States Court of Appeals.

It may be unlikely for this Court to accept an opportunity to determine whether the Disciplinary

Commission of the Supreme Court of Indiana is biased against Ms. Crenshaw. The more significant reality is that it may have to consider the question on petition for writ of certiorari from the Supreme Court of Indiana as well as the United States Court of Appeals. Ms. Crenshaw emphasized the merging Scylla and Charybdis that could produce this difficulty:

> If this Court does not protect its jurisdiction by issuing the requested writ, a Rule To Show Cause will likely be propounded upon your petitioner by the Supreme Court of Indiana. That action alone may preclude federal intervention, moot your petitioner's appeal and substantial federal questions likely to resurface. All lawyers would then be deprived of an impartial determination of certain constitutional rights triggered by a Request For Investigation, submitted to the Disciplinary Commission. At a minimum, your petitioner will have to risk sanctions, including a possible loss of livelihood, or abandon her right to an appeal she has paid for and briefed.
>
> *(Pet For Rehrng, p 10). (appendix references omitted).*

Nonetheless, her request for relief was twice denied. *(Appendix A&B).* It would seem that the Seventh Circuit

would avoid the possibility of having to disregard the Supreme Court of Indiana if not your petitioner's rights.

Ms. Crenshaw's petition for writ of prohibition did not require the United States Court of Appeals to even preliminarily determine that she was the target of bias. It merely signaled related contentions:

> The petitioner contends that the Commission is investigating the Cagen Grievance in a manner that transgresses her constitutional rights. The investigation may constitute unlawful retaliation. It cannot proceed without generating federal questions.
>
> While the Supreme Court of Indiana could address the petitioner's federal claims, she instead presented them to the United States District Court for the Southern District of Indiana as cause number IP98-0240-C-M/S. The matter progressed to appeal number 98-2882. Accordingly, it is in the exclusive jurisdiction of this Court to determine whether federal abstention is appropriate as to the Cagen Grievance.
>
> *(Pet For Rehrng, App p 4-5). (exhibit references omitted).*

Ms. Crenshaw detailed the controversy to no avail in her

Petition For Rehearing with Suggestion for Rehearing En Banc:

> The respondents were ushered into a controversy between the plaintiff and the Honorable Jeffrey J. Dywan, Judge of the Lake Superior Court, Room One (1), sitting at Hammond, Indiana. (*See, Crenshaw v. The Supreme Court of Indiana, et. al.,* No. 98-2882 before the United States Court of Appeals for the Seventh Circuit). The Dywan Controversy mushroomed into a charge of conspiracy to cover-up allegations of impropriety associated with the state courts of Indiana. (*See, Crenshaw v. Baynerd, et. al.,* No. 98-3156 before the United States Court of Appeals for the Seventh Circuit). Chief Justice Shepard facilitated the alleged cover-up in his capacity as Chairperson of the Indiana Judicial Qualifications Commission. (*See, Crenshaw v. The Supreme Court of Indiana, et. al.,* No. 98-2882 before the United States Court of Appeals for the Seventh Circuit). Of course, the United States District Court for the Southern District of Indiana previously noted:
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> > . . . even if this minimal public involvement warrants an inference that the Chief Justice and an associate justice are biased, the fact remains that the investigative and adjudicative functions of any disciplinary

> action are carried out by the Executive Secretary, the Commission and the hearing officer, not the Supreme Court.
>
> *Sterns v. Lundberg*, 922 F.Supp 164 at 170 (S.D. Ind. 1996).

> The Disciplinary Commission, its Executive Secretary and staff attorney face charges that the lawsuit culminating with the aforementioned appeal is an outgrowth of their unlawful retaliation. (*See, Crenshaw v. The Supreme Court of Indiana, et. al.*, No. 98-2882 before the United States Court of Appeals for the Seventh Circuit).
>
> *(Pet For Rehrng p 7-8).*

Case law suggests that all avenues of federal relief should close before such a colorable claim of bias reverts to the state for redress.

> **All avenues of federal relief should close before the United States Court of Appeals allows a colorable claim for denial of due process precipitated by bias to revert to any state tribunal for redress.**
>
> The Seventh Circuit of the United States Court of

Appeals was reminded of previous rulings:

This Court recently noted:

> Almost forty years ago, the Supreme Court reaffirmed a simple but fundamental tenet of due process - 'no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.' . . . This rule applies to courts and administrative agencies alike . . . It is also sufficiently broad to encompass not only those adjudicators with significant, personal financial stakes in the outcome of their cases, but also those whose interests are indirect or somewhat less than substantial.
>
> *Trust & Inv. Advisors, Inc. v. Hogsett,* 43 F.3d 290 at 295 (7th Cir. 1994). (citations omitted).

Accordingly, deference to the Disciplinary Commission in the present case ". . . must be forbidden if the guarantee of due process is to be adequately implemented. *Id. at 297.* The United States Supreme Court would consider the administrative process at issue ". . . so defective and inadequate as to deprive the (plaintiff) of due process of law." *Gibson v.*

> *Berryhill,* 411 U.S. 564 (1973). Deference to it would not be '. . . constitutionally acceptable simply because . . .' the Supreme Court of Indiana or of the United States could ultimately resolve outstanding issues. *Id. at 297.* Your petitioner ". . . is entitled to a neutral detached judge in the first instance." *Hogsett at 297.*
>
> *(Pet For Rehrng p 8-9).*

The United States Court of Appeals may not consider the Disciplinary Commission biased by a pending charge of an offense (retaliation) that supposedly precipitated the litigation and appeal before it. This Court should, nonetheless, provide that it preclude the prospect of state intervention until the underlying appeal is resolved and a subsequent writ of certiorari fails to issue. Otherwise, this Court may contend with a reasonable fight from two (2) fronts, state and federal, resisting decisions arguably incapable of reversing the denial of due process occasioned by the alleged bias of the Disciplinary Commission. The possibility of such complications is easily averted by an appropriate writ protecting the jurisdiction of

the United States Court of Appeals and serving the interests of all concerned.

Conclusion

For the foregoing reasons, your petitioner prays that this Court exercise its power of supervision to insure the proper functioning of the federal judiciary by granting her petition for a writ of certiorari.

RESPECTFULLY SUBMITTED,

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APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

August 31, 1998

Before

Hon. WALTER J. CUMMINGS, *Circuit Judge*

Hon. JOHN L. COFFEY, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

IN THE MATTER OF:	]	Petition for a Writ of
	]	Prohibition from the
ZENA D. CRENSHAW,	]	United States District
Petitioner,	]	Court for the Southern
	]	District of Indiana,
No. 98-3142	]	Indianapolis Division.
	]	
	]	
	]	No. 98 C 240
	]	Larry J. McKinney,
	]	Judge.
	]	

The following is before the court:

1. **PETITION FOR A WRIT OF MANDAMUS,** filed on August 21, 1998, by the pro se petitioner.
IT IS ORDERED that #1 is **DENIED.**

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

October 5, 1998

Before

Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

IN THE MATTER OF:	]	Petition for a Writ of
	]	Prohibition from the
ZENA D. CRENSHAW,	]	United States District
Petitioner,	]	Court for the Southern
	]	District of Indiana,
No. 98-3142	]	Indianapolis Division.
	]	
	]	
	]	No. 98 C 240
	]	Larry J. McKinney,
	]	Judge.

Upon consideration of this Petition for Rehearing and Suggestion for Rehearing En Banc filed in the above entitled case on September 8, 1998 by Petitioner-Appellant Pro Se, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly, it is ordered that the aforesaid Petition for Rehearing and Suggestion for Rehearing En Banc be denied.